

Deryl F. Hamann  
Jerrold L. Strasheim\*  
Gerald P. Laughlin  
John S. Zeilinger\*  
Gary W. Radil  
Kent O. Littlejohn  
Michael G. Lessmann  
Alex M. Clarke\*  
Charles J. Addy\*  
Paul Scott Dye  
Richard J. Pedersen  
Thomas E. Johnson  
Michael L. Sullivan  
David M. Pedersen\*  
William G. Dittrick\*

Kirk S. Blecha\*  
Ronald C. Jensen\*  
John R. Holdenried\*  
John P. Heil  
Steven C. Turner  
Sharon R. Kresha  
James E. O'Connor  
Jonathan R. Breuning\*  
Gary N. Clatterbuck  
Richard E. Putnam  
Dennis J. Fogland  
T. Randall Wright\*  
Mary L. Swick  
Thomas O. Ashby\*  
R.J. Stevenson\*

## BAIRD HOLM

ATTORNEYS AT LAW

A Limited Liability Partnership

EST. 1873

1500 Woodmen Tower  
Omaha, Nebraska 68102.2068  
Telephone 402.344.0500  
Facsimile 402.344.0588  
www.bairdholm.com

Jill R. Ackerman\*  
Barbara E. Person\*  
Lawrence E. Kitenbrink  
Steven D. Davidson  
Frank J. Reida  
Kelly R. Dahl\*  
David J. Kramer  
Christopher R. Hedican\*  
Scott S. Moore  
Julie A. Knutson\*  
T. Parker Schenken\*  
Jon E. Blumenthal  
Victoria H. Finley  
John F. Nownes III  
Maya C. Samms

Patrick J. Ickes  
John W.H. McMullen  
Elizabeth Eynon-Kokrda  
Gretchen A. Herron  
Vickie J. Brady  
Heidi A. Gutttau-Fox\*

*Of Counsel*  
D. Nick Caporale

*Retired*  
Kenneth B. Holm  
Edmund D. McEachen

*\*Also Admitted in Iowa*

December 20, 2000

### VIA FEDERAL EXPRESS

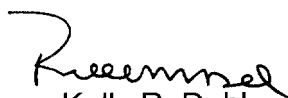
Office of the Secretary  
Federal Communications Commission  
Room TW-A325  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: CC Docket No. WT-00-239

Dear Sir or Madam:

Enclosed is an original and five copies of the Comments of the Nebraska Rural Independent Companies in the above-referenced docket. Please return a file-stamped copy to the undersigned in the self-addressed, stamped envelope.

Very truly yours,

  
Kelly R. Dahl  
FOR THE FIRM

KRD/eam  
DOCS/434828.1  
Enclosures

cc: Sue Vanicek (w/enc.)

DOCKET FILE COPY ORIGINAL

Writer's Direct Dial No:  
402-636-8223

Writer's Direct Dial Fax:  
402-231-8554

E-Mail Address:  
kdahl@bairdholm.com

RECEIVED

DEC 21 2000

FCC MAIL ROOM

No. of Copies rec'd 014  
List ABCDE

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
WIRELESS TELECOMMUNICATIONS BUREAU  
COMMERCIAL WIRELESS DIVISION  
POLICY AND RULES BRANCH**

**RECEIVED**

**DEC 21 2000**

**FCC MAIL ROOM**

In the Matter of	)	WT-00-239
	)	
Wireless Telecommunications Bureau Seeks	)	Comments of
Comment on Petition for Declaratory Ruling	)	Arlington Telephone Company
that Western Wireless' Basic Universal	)	Clarks Telecommunications Co.
Service in Kansas is Subject to Regulation as	)	Consolidated Telco, Inc.
Local Exchange Service	)	Eastern Nebraska Telephone Company
	)	Great Plains Communications, Inc.
	)	Hartington Telecommunications, Inc.
	)	Hershey Cooperative Telephone Company
	)	Hooper Telephone Company
	)	K&M Telephone Company
	)	NebCom, Inc.
	)	Nebraska Central Telephone Company
	)	Northeast Nebraska Telephone Company
	)	Pierce Telephone Company
	)	Rock County Telephone Company
	)	Southeast Nebraska Telephone Co.
	)	Stanton Telecom, Inc., and
	)	The Blair Telephone Company,
	)	the "Nebraska Companies"

**COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES**

The undersigned Nebraska Rural Independent Companies ("Nebraska Companies") file these comments in support of the petition filed by Kansas independent telephone companies ("Kansas Independents") requesting that the Commission issue a declaratory ruling clarifying that Western Wireless' Basic Universal Service ("BUS") in Kansas is not a Commercial Mobile Radio Service ("CMRS"). The Nebraska Companies agree that federal law does not preempt or preclude the Kansas Corporation Commission ("Kansas Commission") from applying to the BUS offering regulations and Universal Service Fund ("USF") requirements applicable to all local exchange carriers and to Eligible Telecommunications Carriers ("ETCs") in Kansas. The

Nebraska Companies will show the situation in Kansas is not unique, in fact, Western Wireless has made similar representations regarding its offerings in Nebraska. The Nebraska Companies share the concern that Western Wireless will receive significant and unfair advantages over other ETCs that provide local exchange service should it receive USF support without similar conditions to those required of other ETCs.

The Nebraska Companies will specifically comment on two areas, based on the record developed in the Nebraska ETC docket:<sup>1</sup> (1) the evidence in Nebraska also supports a finding that Western Wireless' BUS offering should be considered local exchange service and not CMRS; and (2) the Nebraska Public Service Commission ("Nebraska Commission") considers itself preempted by Section 332(c)(3) of the Communications Act from subjecting Western Wireless' BUS offering in Nebraska to conditions similar to those of LECs in granting ETC designation.

In the evidence presented in the Nebraska ETC docket, Western Wireless' witness described the proposed service as essentially a fixed service intended as a replacement for local exchange service, "[t]he wireless access unit functions as a replacement for the 'last mile' of copper wire of the incumbent LEC. However the signal coverage of a wireless access unit is optimized over the customer using a handheld or portable phone as the radio transmitter and receiver."<sup>2</sup>

The Western Wireless direct testimony stated that it intended to "provision its universal service offerings to introduce a mobility component that will allow customers to use their phone

---

<sup>1</sup> *GCC License Corporation (Western Wireless), Issaquah, Washington, Seeking Designation as an Eligible Telecommunications Carrier That May Receive Universal Service Support*, Nebraska Public Service Commission Application No. C-1889 ("Western Wireless ETC Docket").

<sup>2</sup> *See Western Wireless ETC Docket*, Hearing Transcript, October 20 & 21, 1999, Vol. I at 65.

outside of the home.”<sup>3</sup> At the hearing, its witness did not state that this “mobility component” was expected to be the ordinary use and acknowledged that the configuration of fixed-wireless technology limits the use to only making calls from within his or her home service area, not when in other service areas. The witness stated, “[t]he way we configure the wireless residential service offering is that their mobility would be limited to the home service area. So, what that means is that the unit could be used within *a defined community* that is served by the cell site. But, they would not be able to take that unit and use it in a different community that is served by a different cell site.”<sup>4</sup> Such limitations clearly differentiate this service from traditional CMRS, where a customer has widespread mobility to make calls both inside and beyond a local calling area. As the Kansas Independents convincingly show in their petition, and consistent with the record presented in Nebraska, Western Wireless’ service is comparable to local exchange service, and is not ordinarily a mobile service.

The Kansas Independents seek Commission declaration that Western Wireless’ service is not CMRS so that the Kansas Commission will not consider itself preempted from applying regulations and USF requirements generally applicable to other ETCs in that state. In Nebraska, the concern that fixed service will be considered CMRS has become a reality. The Nebraska Commission recently granted Western Wireless with ETC status in exchanges of both non-rural and rural LECs.<sup>5</sup> In this order, the Nebraska Commission observed that any jurisdiction it believes it has over Western Wireless’ offering “falls short of, and does not include, ‘entry and

---

<sup>3</sup> See *Western Wireless ETC Docket*, Direct Testimony of Gene DeJordy on Behalf of GCC License Corporation, April 6, 1999 at 13.

<sup>4</sup> See *Western Wireless ETC Docket*, Hearing Transcript, October 20 & 21, 1999, Volume 1 at 99 (emphasis added).

<sup>5</sup> See *Western Wireless ETC Docket*, Order Granting ETC Status and Issuing Findings, November 21, 2000.

rate' regulation.”<sup>6</sup> This is a direct reference to Section 332(c)(3) of the Communications Act, which prohibits state regulation of CMRS. Meanwhile, all other existing ETCs in Nebraska are subject to a host of requirements, including local rate benchmarks and earnings oversight.<sup>7</sup> Thus, the representations of Western Wireless made in Nebraska have resulted in a situation similar to that in Kansas.

In summary, the Nebraska Companies respectfully request that the Commission grant the Kansas Independents' petition and find that states are not preempted under federal law from regulating Western Wireless' BUS offering as local exchange service.

---

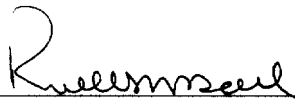
<sup>6</sup> Ibid. at 11.

<sup>7</sup> The Nebraska Companies filed a Motion for Reconsideration of this order on December 1, 2000 that is currently pending before the Nebraska Commission. Among the remedies requested in the motion is that Western Wireless' service be regulated as basic local exchange service and be subject to universal service conditions required of other ETCs in the state.

Dated this 20th day of December, 2000.

Respectfully submitted,

Arlington Telephone Company  
Clarks Telecommunications Co.  
Consolidated Telco, Inc.  
Eastern Nebraska Telephone Company  
Great Plains Communications, Inc.  
Hartington Telecommunications, Inc.  
Hershey Cooperative Telephone Company  
Hooper Telephone Company  
K&M Telephone Company  
Neb Com, Inc.  
Nebraska Central Telephone Company  
Northeast Nebraska Telephone Company  
Pierce Telephone Company  
Rock County Telephone Company  
Southeast Nebraska Telephone Co.  
Stanton Telecom, Inc., and  
The Blair Telephone Company,  
the "Nebraska Companies"

By \_\_\_\_\_  
Kelly R. Dahl (#19273)  
of BAIRD, HOLM, McEACHEN, PEDEREN,  
HAMANN & STRASHEIM LLP  
1500 Woodmen Tower  
Omaha, Nebraska 68102  
(402) 344-0500

## CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the above and foregoing Comments were served this 20th day of December, 2000, by regular United States mail, first-class postage prepaid, on the following:

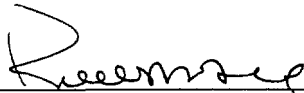
Mark E. Caplinger  
James M. Caplinger  
James M. Caplinger, Chartered  
823 W. 10th  
Topeka, KS 66612

Counsel for State Independent Alliance

Thomas E. Gleason, Jr.  
Gleason & Doty, Chartered  
P. O. Box 6  
Lawrence, KS 66044

Counsel for Independent  
Telecommunications Group

Stephen G. Kraskin  
David Cosson  
John B. Adams  
Kraskin, Lessee & Cosson, LLP  
2120 L Street, N.W., Suite 520  
Washington, D.C. 20037



---

DOCS/440521.1